

**CHARTER COMMISSION  
CITY AND COUNTY OF HONOLULU  
711 Kapiolani Blvd. Suite 1485  
Honolulu, Hawaii 96813**



WEDNESDAY, JULY 11, 2006  
REGULAR MEETING

CITY COUNCIL COMMITTEE ROOM  
SECOND FLOOR  
CITY HALL

MINUTES

**Charter Commission Members Present:**

Donn M. Takaki  
Jeffrey T. Mikulina  
E. Gordon Grau  
Amy Hirano  
Darolyn H. Lendio  
Jim Myers  
James Pacopac  
Malcolm Tom

**Charter Commission Members Excused:**

Andy Chang  
Jerry Coffee  
Jared Kawashima  
James Pacopac  
Jan Sullivan

**Others Present:**

Chuck Narikiyo, Executive Administrator, Charter Commission  
Diane Kawauchi, Deputy Corporation Counsel, Department of the Corporation Counsel  
Lori K. K. Sunakoda, Deputy Corporation Counsel, Department of Corporation Counsel  
Dawn Spurlin, Deputy Corporation Counsel, Department of Corporation Counsel  
Loretta Ho, Secretary, Charter Commission  
Nicole Love, Researcher, Charter Commission

**1. Call to Order**

Chair Donn Takaki called the meeting to order at 4:03 p.m. on July 11, 2006.

2. **For Approval - Minutes from March 21, April 18, May 2 and June 7, 2006 meetings**

Chair Takaki noted that the minutes were available for the public to review in draft form.

**Action:**

Commissioner Lendio moved to approve the minutes of March 21, 2006 meeting.  
Commissioner Hirano seconded the motion. Discussion followed.

Commissioner Myers noted the spelling of "Cafeteria" on the first page; fourth line needs to be corrected. Staff noted the change.

All commissioners present voted in favor of the motion, and the motion was passed.

Commissioner Lendio moved to approve the minutes of April 18, 2006 meeting.  
Commissioner Hirano seconded the motion. No discussion followed.

All commissioners present voted in favor of the motion, and the motion was passed.

Commission Lendio moved to approve the minutes of May 2, 2006 meeting. Commissioner Hirano seconded the motion. No discussion followed.

All commissioners present voted in favor of the motion, and the motion was passed.

Commission Lendio moved to approve the minutes of June 7, 2006 meeting. Commissioner Hirano seconded the motion. No discussion followed.

All commissioners present voted in favor of the motion, and the motion was passed

3. **Executive Administrator's Report**

Executive Administrator Narikiyo reported the budget bill was signed by the Mayor for the new fiscal year. He noted he understood the Commission was significantly under budget last year and that a large amount of that was because of non-use of the amount set aside for legal fees. He also noted however not taking that into account the Commission was still about \$75,000 under budget. He would provide a final report to the Commission Treasurer.

Executive Administrator Narikiyo stated under the Rules and Calendar approved in April, June was set aside to allow for agency and legal review. A few comments have been received by agencies and have been provided to the Commissioners (**Attachment A**).

Executive Administrator Narikiyo reported the Committee on Style would be meeting on Wednesday, July 19 at 4:00 p.m. in the City Council Committee Room, the Submission and Information Committee would be meeting on Thursday, July 20, 2006 at 4:00 p.m. same place. Executive Administrator Narikiyo stated the specific tasks for the two Committees would be: the Committee on Style would finalize the language of the proposed amendments and drafting the ballot questions and order of items. Following the Committee meetings in July a report would be provided to the full Commission in August and final approval would take place at that time. The Committee of Submission and Information are responsible for

the digest of the proposed amendments for the newspaper, also to plan and execute a voter education mailing for all households, and also plan and execute the public information campaign. He passed out excerpts of the digest that was published in the paper for the 1992 Commission (**Attachment B**), excerpts from the brochure for the 1992 Commission (**Attachment C**), and excerpts from the pamphlet for the 1998 Commission (**Attachment D**).

Executive Administrator Narikiyo commented if the Commissioners are not on a particular Committee but have some ideas or input, they are welcome to give it to the staff to pass on to the Committees, or they may attend the Committee meetings, they just can't participate in the voting. He went on to say with regard to the ballot question format, some of the issues under consideration would be how the question should be formatted on the ballot. Should they be formatted as questions or as phrases? He noted they have been formatted both ways in the past. Executive Administrator Narikiyo noted another issue would be the order of the ballot questions, e.g., are there any general topics should come earlier or later? Should the housekeeping topics be at the end or the more controversial ones be in the beginning? Those are things that need to be decided by the Commission. Executive Administrator Narikiyo stated the Committee on Submission and Information will consider digest format; past Commissions have included not all at once but at various times a digest, which is a summary of the amendments, as it is required by the Charter. He went on to say some have included a rationale, some have phrased in terms of present description of the status quo, pros and cons, and bullet point lists. Some other states have included background explanation, some have provided statements for or against the proposals written by proponents or opponents of the measures. Executive Administrator Narikiyo stated he would be meeting or talking to the Committee Chairs before next week's meetings.

Lastly Executive Administrator Narikiyo gave an overview of key dates. September 1 is the key date to get the language for the proposals to the Clerk's office. By September 23, the Commission needs to publish the digest in the paper and make available translations of the full text of the amendments. Executive Administrator Narikiyo noted he would meet with Treasurer Myers and Chair Sullivan about the time frame for translation of the full text of the amendments. He noted the full Commission needs to meet before September 1 for the final approval of the Style Committee report. He stated the TV ads and mass mailing would be in October.

#### **4. Review and Discussion and Legal and Agency Comments**

Executive Administrator Narikiyo noted that the agency comments and legal review had been provided to the Commissioners.

Chair Takaki clarified that agency comments (**Attachment A**) have been received from the Honolulu Police Department, Prosecuting Attorney, Department of Design and Construction, Emergency Medical Services Department, Honolulu Fire Department, Department of Parks and Recreation. He stated the Style Committee would take the agencies' and Corporation Counsel's comments into consideration at their next meeting and for their report.

Chair Takaki asked Corporation Counsel if they would like to give a presentation to the Commission? Deputy Corporation Counsel Kawauchi asked if the Commission would like the Corporation Counsel to comment on the proposals in numerical order? Chair Takaki responded he thought so if they could do it in a summary fashion because the Committee on

Style would have to review these more in depth. He stated if the Corporation Counsel felt the Commission needed to go into Executive Session, they should advise the Commission. Deputy Corporation Counsel Kawauchi responded she understood.

Deputy Corporation Counsel Kawauchi stated Proposal 1 deals with the Salary Commission to delete the requirements for Counsel approval or rejection of the recommendation of the Salary Commission. She stated Corporation Counsel reviewed the status of the law for the Charter Commission earlier and determined to be some conflict between current procedures and Hawaii Revised Statutes but took comfort that over decades of time there has not been any legal challenge with respect to those conflicts. She noted neighbor island county charters have also provided for a Salary Commission to establish the salaries of certain officials in their governments. Deputy Corporation Counsel Kawauchi stated knowing that, they would not take a hard position that the Charter Commission proceed and the Commission did vote to have Proposal 1 go on to the ballot and the Corporation Counsel concurs with that.

Deputy Corporation Counsel Kawauchi stated on Proposal 5 they do not have any legal comments.

Deputy Corporation Counsel Kawauchi stated Proposal 27 was a proposal she worked on and had difficulty regarding the transition language for the current Administrator and Deputy Corporation Counsel Administrator position. She stated she made revisions to the transition language to address the potential illegality of that treatment of the incumbent and instead fell back on existing civil service rules that deal with abolishment of civil service positions and treated those positions in that way. She went on to say she was concerned that any revision she would propose to Proposal 27 not detract from the original intention of the submittal of the proposal. Deputy Corporation Counsel Kawauchi stated she did some research and found text that was discussed before the City Council in a Council-initiated charter amendment. She stated it refers back to the City Auditor's report that commented that the civil service status of the Administrator should be evaluated as a means to give the Liquor Commission greater oversight in the agency and over the Administrator. She went on to say knowing that it was to give greater control over the Liquor Commission she felt a little more comfortable making recommendations to the Charter Commission for consideration. She stated there were a number of them she proposed in the redraft proposal. One dealt with placing the exempt position in position classification plans, which would allow exempt positions to be placed within a pay range based upon the supervisory responsibility, functions and duties of that exempt position. Then the appointing authority would be able to set the salary within that salary range established citywide by the Department of Human Resources. She suggested that the appointing authority set the salary of the individual to be appointed. So the Liquor Commission appoints the Administrator, they should establish the salary of the Administrator and the Administrator appoints the deputy and the Administrator should establish the salary of the deputy. Deputy Corporation Counsel Kawauchi noted in the Charter most exempt Administrators are given an exempt secretary position and proposed that to be considered by the Charter Commission as well. She stated she attached a revised Proposal 27 for consideration by the Charter Commission.

Deputy Corporation Counsel Kawauchi commented she knows it's a lot going on and asked if they had any questions or the Commission could go more into detail at the Committee on

Style meeting. Chair Takaki replied he thinks they would go more into detail at the Committee on Style meeting and would want to give the Liquor Commission and other interested parties to comment on their proposed changes before they make their vote.

Deputy Corporation Counsel Lori Sunakoda commented that the last proposed amendment to Proposal 28 involves the term "elected officials" which they find problematic. She clarified the term "elected officials" is not found anywhere nor referenced anywhere in the Charter and found an alternative for the Commission to consider. She stated they have found alternative language in Article XI, RCH, entitled, "Standards of Conduct," which referenced the term "elected officers". She stated they believe and arguable that it's a non-substantive revision and possible alternative or option for the Commission to consider in lieu of the "elected officials" terminology in the proposed language in Section 11-106 and Section 11-107, RCH. Deputy Corporation Counsel Sunakoda stated that would be more consistent with the existing language and provide a consistent reference point.

Deputy Corporation Counsel Dawn Spurlin commented she reviewed Proposal 33 and 36 jointly because they overlap discussion of the Functions, Duties, Powers of the Honolulu Fire Department and the Emergency Services Department. She stated she double-checked the legislative history of the original Charter language and they have some concerns. She stated the prior Charter Commission, when adopting the organizational structure for the City, chose a structure that they believed would foster good administration. She goes on to say the structure adopted assigned each department with Powers, Duties and Functions specific to that department and there were no overlapping of functions or duties. Deputy Corporation Counsel Spurlin stated another concern was the prior Commission had assigned the primary responsibility for emergency medical care to Emergency Services as their primary function. Her third concern is an overlapping of emergency response in the ocean and the shoreline. She stated there is an administrative concern, who's responsible for what. And there's a potential liability concern if both agencies are responsible and only one responds, could a plaintiff allege that the other agency could've responded faster. Deputy Corporation Counsel Spurlin commented her fourth concern the language "pre-hospital medical resource" in Proposal 33. She clarified ESD wanted to be the pre-hospital medical resource but she didn't know what it meant, and if she as a lawyer didn't know what it meant she could argue that it is vague and ambiguous. She noted she contacted the agency and they agency clarified they used the term to mean that they respond to all the public health issues. Deputy Corporation Counsel Spurlin stated she revised both proposals to be consistent with the intent of the past Charter Commissions. She clarified both HFD and EMS was consulted and they both did not have any objections to the revisions. She stated she also asked both agencies if they had a problem with combining both proposals on the ballot as a ballot question, and they both did not have any objections to that.

Deputy Corporation Counsel Kawauchi they do not have any legal comments on Proposal 34, 35 or 51.

Deputy Corporation Counsel Kawauchi commented on Proposal 55 the Charter Commission had asked for a legal opinion on whether term limits can be retroactively applied to include terms already served by an incumbent Councilmember and that opinion had been sent under separate cover to the Commission. She stated they reviewed the proposed text and the trouble they have is the transition language. She went on to say she knows the Commission had the Committee on Style draft before that was simple and was concerned

that language was not going to be clear enough to avoid any future challenges on interpretation of what the Commission desired and had proposed revised transition language for both Alternative "A" and Alternative "B". She stated in Alternative "B" in light of Corporation Counsel opinion that new term limits could be at the Commission's choice applied prospectively or to terms already served. She stated she provided Alternative "B1" which is the prospective application only on term limits. Alternative "B2" applies to terms already served. Deputy Corporation Counsel Kawauchi asked the Commission to review their recommendation and indicate their preference so that it is clear in the Charter Commission minutes what is intended. She noted there was a typographical error in the recitation of the section number that she corrected, which should be Section 13-116 and also a revision to pluralize "election," which was in the singular. Commissioner Lendio commented as with the Liquor Commission proposal, she stated perhaps the City Council should get a copy of the proposed language and then comment on it at the next meeting.

Deputy Corporation Counsel Sunakoda stated the concern they have with Proposal 71 is that it refers to a comprehensive curbside recycling system that the director would be mandated to administer. She stated that term is undefined in the existing charter language and because the term is arguably vague, general, broad, ambiguous they have a legal concern that it would be subject to broad interpretation. She went on to say because it would ultimately it would impose an additional mandate upon the director notwithstanding the underlying intent of the proposal, from a legal standpoint they have a concern with respect to the use of the term "comprehensive." Commissioner Grau asked the Commissioners present if they have any thoughts of that could be addressed? Commissioner Mikulina commented he doesn't think it's a problem at all. He asked who would sue the City on the basis it is not comprehensive enough? Commissioner Mikulina stated when he looked back at the legislative record, the minutes and discussion that took place and when Commissioner Tom recommended that, the discussion that happened with the testifiers was if it was a green waste program like the City calls comprehensive recycling or are they talking about what 10,000 cities across America do, which is bottles, newspaper, cardboard, etc. He commented the record shows that people are contemplating the other materials besides green waste and that is up to the department to decide, but it is that range which would be comprehensive. Commissioner Mikulina noted there may be another word to capture other materials and thinks its safe with "comprehensive" and commented there are a lot of terms that in the Charter that are undefined. Deputy Corporation Counsel Sunakoda replied if there could be further clarification and wasn't sure if when this was drafted if "comprehensive" was a common term they found utilized or contained in other statutes in other jurisdictions or other ordinances in other jurisdictions. She offered to do research in other jurisdictions. Deputy Corporation Counsel Sunakoda explained unless the term is specifically defined in the proposed amendment, that's where she would have concerns. She went on to say it may not be limited to one organization that may take exception on how the director is administering the program and fulfill the mandate should the voters approve the proposal. She offered to do research to see if there is a term that would not present the same problem. Deputy Corporation Counsel Sunakoda stated the term has to be clarified if they are going to leave it in or they would have to find something that would fulfill the intent that was contemplated and not something that can be subject to a broad interpretation that may invite unnecessary litigation.

Commissioner Mikulina asked Commissioner Tom for his interpretation of the word "comprehensive" when he proposed it? Commissioner Tom responded he agreed with

Commissioner Mikulina regarding the testimony was regarding curbside recycling and the intent was to include more than just green waste or even conversion of garbage to electricity without going into details of the proposed ordinance that listed the specific items. Commissioner Tom commented the suggestion by Deputy Corporation Counsel Sunakoda to do further research and to report back to the Committee on Style was a good idea. Chair Takaki commented they would have Researcher Nikki Love also see if the jurisdictions that do require it in the charter, what language they used in their charter.

Deputy Corporation Counsel Kawauchi commented for Proposal 75 there was public testimony suggesting an alternate citation to the Hawaii Constitution Article Section and recommended that it be adopted by the Charter Commission.

Deputy Corporation Counsel Kawauchi commented for Proposal 76 there were no legal comments and it was proposed by the Corporation Counsel as a housekeeping item to conform to the court decision.

Deputy Corporation Counsel Kawauchi commented Proposal 78 there were no legal comments and was also proposed by the Department of the Corporation Counsel and to conform with case law dealing with the status of the Civil Defense Administrator as civil service position and not consistent with a confirmation by the Council procedure.

Deputy Corporation Counsel Kawauchi commented Proposal 91 they made two stylistic changes. First is changing the clause "land or property entitlements" in subsection 2 of the proposal, using language that appears in the charter of "real estate or any interest therein". They believe this is a stylistic change and not a substantive change. She went on to say it was consistent with the testimony of the Department of Budget and Fiscal Services that there is no "certified real property tax revenues" and changed it to "estimated real property tax revenues." Deputy Corporation Counsel Kawauchi stated in her review of the proposal she had some discussion with the Department of Budget and Fiscal Services and understands there will be implementation problems if all of this money is in one fund. She went on to say in the future there would be accounting problems in knowing at any one point in time know how much is in that fund for affordable housing versus natural resource preservation. She stated she would take it upon herself to submit a revised proposal for the Committee on Style meeting for consideration that would break it out into two funds. She noted this would not be a substantive change. Deputy Corporation Counsel commented there was an item brought up in a public testimony regarding the language in subsection of the proposal as to whether the monies in the funds could be used for payment of bonds issued before or after the enactment of the Charter section. She stated she would ask the Commission to review that language because the way it's presented in the text it's superfluous. She commented she thinks the intention may have been that the monies in the fund could be used to pay bonds whether they were issued before or after the enactment and doesn't want to change the Charter Commission's intent and feels they should clear that up in the Committee on Style. Commissioner Tom asked Deputy Corporation Counsel Kawauchi on that one issue, what was her intent of the proposed change? He asked is it to allow the monies to be used for bond prior and after or just after? Deputy Corporation Counsel Kawauchi responded the language of subsection 4 first section talks about the use of monies in the funds for bonds subsequent to enactment and the last sentence says monies in the fund may also be used for bonds issued subsequent to enactment. She stated the second sentence seems superfluous and if so and the Commissions intent that it

only be used for after issue bonds then they should remove the second sentence. If it was a typo and it was intended to be bonds issued after and before, then that needs to be cleared up.

Deputy Corporation Counsel Kawauchi commented Proposal S-6 was to deal with privacy concerns to delete Social Security numbers of individuals who sign petitions for initiating a City ordinance, recall of an elected City officer or to amend the City Charter.

Deputy Corporation Counsel Sunakoda commented they have concerns with the interpretation of the term pedestrian-bicycle-friendly city in Proposal S-9. She goes on to say for the same reasons as they had with Proposal 71 and as well as "priority" and believes they are undefined concepts and may invite litigation because they are not anywhere defined in the Charter or the proposed amendment with respect whether the Director of Transportation for the City is administering his mandate as set forth in the charter. She offered to do research and report back to the Committee on Style should she find alternative acceptable language.

Deputy Corporation Counsel Sunakoda commented they have concerns with the use of "widely accessible electronic medium" in Proposal S-10. She stated she did some research and while electronic medium does not appear to be a problem, the term "widely accessible" does present some concern because it's not defined. She noted there were a few cases that suggested there may be some legal issues that resulted in some litigation concerns. She again offered to do further research on finding if they could use an alternative terminology. Chair Takaki commented maybe she could work with Researcher Nikki Love to see if there are other cities or other charters that do require distribution via electronic medium, what language they would use specifically. This would go for recycling and pedestrian-bicycle-friendly. Commissioner Mikulina commented on this issue they started with Internet and then there was public testimony commenting there may not be Internet in 10 years there may be something else. He stated he amended it to "widely accessible electronic medium" contemplating whatever it may be but most likely it would be electronic in some way. He noted "widely accessible" is the issue and the existing language, it was "newspaper of general circulation." Deputy Corporation Counsel Sunakoda responded there was a lot of case law that addresses newspaper of general circulation and what that entails. She went on to say because with the Internet, there's even a question as to what's "widely accessible", not necessarily those terms but something similar in those terms, and has been cited in cases and that's their concern. She stated there's also an issue as to what is the extent with respect to the City's website? Do they have to provide for every individual with respect for example, the American with Disabilities Act. Commissioner Mikulina asked if they could find parallels between general circulation and something like Internet. Deputy Corporation Counsel Sunakoda responded the electronic medium is fine, the issue is more "widely accessible". Commissioner Grau asked if it could be dealt with by saying the "Internet or its successor"? Deputy Corporation Counsel Sunakoda responded they could look into that and she would confer with the Department of Information Technology.

Chair Takaki thanked the Corporation Counsel for all of their research and work they have done on this for the Commission. He went on to say that on the Committee on Style agenda they would post proposed language changes from the Corporation Counsel as well as any department who suggested language changes so the public has ample time to testify to the Committee on Style on those proposed changes. Chair Takaki explained the Committee on



Style would go back to the full Commission for approval and if they don't get approval from the full Commission at that time, they would be working on a very tight timeline. He stated if they have any concerns or comments on any of the proposed language changes to make them known to the Committee on Style whether they are on the committee or not so they can keep moving forward on the process.

Executive Administrator Narikiyo commented that attached to the Committee on Style agenda would be a first draft of ballot question language for their consideration.

Commissioner Grau stated he has a general question relating to some of the issues where there might be vagueness. He suggested what constituted Emergency Medical Services 50 years ago is fundamentally different to what it constitutes today. He said one could argue that there is vagueness in the phrase "Emergency Medical Service." He noted that the standard practice of medicine changes almost daily. He commented he's not troubled by the idea of "comprehensive curbside recycling" any more than he is about the phrase "Emergency Medical Services." He asked the Commissioners if anyone could comment on that. Commissioner Tom responded he would like to augment what Commissioner Grau said. In 1992 when the Commission convened, it was known as the Department of Health and not as the Department of Emergency Medical Services. He went on to say if Dr. Char was present she would probably tell them that at that time they were just considered an ambulance service and would just pick up and deliver. Now they provide medical service on the spot and try to treat the patient to stabilize the traumatic experience. Commissioner Tom stated the department has changed and will continue to change over the years.

Commissioner Lendio commented she views the Corporation Counsel opinions as giving the Commission options with regards to degrees of risk should the Commission approve the existing language. She stated she's not troubled with the various terms described as vague and ambiguous because they would reach a litigation scenario as Commissioner Mikulina stated earlier, such as the Sierra Club would be moving to enforce the language that's vague and ambiguous against the City because they don't feel there has been compliance with that particular term. She commented only under that scenario she would be concerned about anything, but she's not concerned. Commissioner Lendio commented if "comprehensive" is satisfactory to the voters and thinks if the Sierra Club or other agencies wanted to file a lawsuit to enforce a charter provision they felt was not being enforced, then the courts could determine whether that term has been met or not by the department. Commissioner Lendio thanked Corporation Counsel for their research and comments in terms of the degree of risk the Commission would be taking and thinks it's a small risk if they do adopt the words that are intentionally vague and ambiguous but they know what it means to the Commission.

Commissioner Tom expressed his appreciation to Corporation Counsel's willingness to do research for alternative for the Commission to consider to minimize the risk Commissioner Lendio talked about.

Commissioner Grau expressed his gratitude to their Corporation Counsel for their work they have done for the Commission.

Commissioner Mikulina commented if anything is litigated the court might look back to the minutes to see what was transpired, and what was said, and what was possibly meant behind the words, and he has some comfort in that.

**5. Committee Reports**

- a. **Report of the Style Committee** – Executive Administrator Narikiyo reported he would be meeting with Chair Kawashima on Thursday.
- b. **Report of the Submission and Information Committee** – Executive Administrator Narikiyo reported he would be having a conference call with Chair Sullivan next week Monday and will also be meeting with Commissioner Myers to work on the budget and timeline ahead of the meeting.
- c. **Report of the Budget Committee** – No Report.
- d. **Report of the Personnel Committee** – No Report.
- e. **Report of the Rules Committee** – No Report.

**6. Officers Report**

- a. Chair – Chair Takaki had no report.
- b. Vice Chair – Commissioner Mikulina had no report.
- c. Treasurer – Commissioner Myers had no report.
- d. Secretary – Commissioner Pacopac had no report.

**7. Announcements**

None.

**8. Next Meeting Schedule**

Dates for the next full Commission meeting to be determined.

**9. Adjournment**

Commissioner Lendio moved to adjourn, Commissioner Hirano seconded that motion. Meeting was adjourned at 4:56 p.m.